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LAND USE AND LOCAL FINANCE

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PART II. REGULATION AND CONTROL OF LAND USE

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Land Use and Local Finance

MABEL WALKER
Executive Director, Tax Institute, Incorporated

PART II. REGULATION AND CONTROL OF LAND USE[1]

LAND USE constitutes one of the most pressing problems confronting the American city. Although transportation, sanitation, and finance may appear in sharper and more immediate focus, the determination of land use is perhaps the basic problem, in view of the extent to which wise planning of land uses, or the lack of such planning, affects each of these problems, as well as many others. Disposition of the use of urban land is at the crux of varied urban problems.

The impact of dynamic technological, sociological, and economic changes comes to a sharp focus in urban regions. How can the rigid physical structures of streets, mammoth buildings of concrete and stone, and deeply embedded multi-layers of pipes, ducts, and wires be reshaped to modern needs? How can the maelstroms of poverty, crime, and illness be rehabilitated with live, healthy, and responsible human beings? How can archaic and illogical governmental and revenue patterns be redesigned to conform to present-day needs?

The necessary human skills to solve these problems may exist, but they are scattered and divided among many professions that often have little more than a nodding acquaintance with each other. To a considerable extent each of the essential professions is going its own way with scant regard for the others. Moreover, the professions must move through the people and the people through the politicians.

In adapting the city to the needs of modern man, the disposition of land uses cannot be left entirely to the vagaries of individual land holders. It has not been in the past. It is not at present, and probably even less so will it be in the future. As population pressures and competing land uses intensify, more and more public regulation and control of land will be necessitated. The objective of control and regulation in a relatively static community may be merely to maintain what is considered to be a satisfactory status quo, or to bring about standards of land use more in conformity with current economic and social objectives. In a dynamic community, the objective is to insure that the anticipated growth and development will be along lines that are desirable from the standpoint of the highest community fulfillment—economically, socially, and culturally.

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[1] Part II of an article on Land Use and Local Finance. Part I, dealing with "Land Uses and Values," was published in the November-December, 1960, issue of TAX POLICY. Part III will deal with "Fiscal Aspects of Land Use." The entire article on Land Use and Local Finance will be the first in a series of articles on Utilities and the City. The economic aspects of the city have been touched on briefly in an earlier series of articles in TAX POLICY. These were reprinted in *Business Enterprise and The City*, published by the Tax Institute in 1958.

The measure of the city is man. The modern city must serve the needs of modern man: economically, as a worker and a consumer; socially, with housing, recreation, and education; spiritually, with places of worship or other spiritual refreshment; and aesthetically with beauty.

Types of Controls

Society imposes numerous controls and regulations on the use of urban land. These controls tend to become more far-reaching all the time. Governmental devices for regulating and controlling the use of urban land fall mainly into four broad categories:

1. Police power
2. Planning
3. Taxation
4. Public ownership—complete, partial, or temporary

It would be difficult to decide—and there is little merit in debating—the order of priority of these categories, either historically or in point of importance. Moreover, the demarcation is not clear-cut. There is considerable overlapping between categories. Enforcement of taxation laws, for example, results in some public ownership because of tax foreclosure of delinquent lands. Some controls, such as zoning, exhibit both police power and planning characteristics.

When we consider these controls from the standpoint of how drastically they affect the landowner, they range from the relatively mild exercise of police power with respect to nuisances to outright acquisition of the land itself. It seems appropriate, however, to give first consideration to planning in the category of controls, since that implies a logical, reasoned, direct, and overall approach to the problem of land use.

The rapid growth of great cities in a new country—which was busily developing new political processes, a new culture, and a new dynamic economy—resulted in considerable helter-skelter development in our cities. Now, as the tempo of economic and technological changes becomes constantly accelerated and as sociological and cultural changes are also taking place rapidly the difficulties of orderly urban planning become constantly greater.

Urban land is a commodity characterized by scarcity. There are many competing needs of great validity. Land is needed for residences, transportation, industries, commerce, public buildings, utilities, educational and welfare institutions, recreation, worship, and other purposes.

Price is, has been, and will undoubtedly continue to be, a major regulator and allocator of land uses. But the land market with its multitudinous operators works independently, blindly, and imperfectly, and largely ignores social and cultural considerations. When market values are the sole determinant of land use, not even values are adequately maintained. Something more is needed.

Planning

The concept of urban planning is not new. It is both ancient and widespread and is evident in many places and cultures. Archaeologists are busily uncovering prehistoric cities that show logical and orderly planning for the

community needs of their times. It has been pointed out that the Egyptian pyramid builders planned cities as far back as 3,000 B.C.[2] The neat and orderly arrangement of the Indian village of Secota as painted by John White, who visited Virginia with Raleigh's first expedition in 1585, exhibits the considerable degree of artistry and skill with which these pre-colonial Indians planned their little community with respect to economic and social activities.[3] A fascinating account of ancient and medieval planning activities can be found in *The City in History* by Lewis Mumford.[4]

Definition of Planning

Urban planning has been defined by a member of the profession as follows:

> . . . . City planning may be regarded as a means for systematically anticipating and achieving adjustment in the physical environment of a city consistent[1] with social and economic trends and sound principles of civic design. It involves a continuing process of deriving, organizing, and presenting a broad and comprehensive program for urban development and renewal. It is designed to fulfill local objectives of social, economic, and physical well-being, considering both immediate needs and those of the foreseeable future. . . .[5]

Such a broad conception of planning has been most dramatically utilized by the dynamic Greek planner, Constantinos Apostolos Doxiadis, "who in less than a decade has built up possibly the largest, certainly the most remarkable, city-planning practice in the world."[6]

Dr. Doxiadis has coined the word "Ekistics," the science of human settlements, to denote planning as he interprets it. He is currently carrying on a number of activities in various other countries, including the United States. In his organization of some 500 employees in Athens, in addition to

> scores of architects, planners, and engineers, there is a smattering of archaeologists, cartographers, topographers, geologists, meteorologists, mathematicians, social scientists, economists, lawyers, and even a psychologist or two. Ekistics, like Doxiadis himself, is regarded on Lycabettus Hill with something approaching the awe of Zeus.[7]

City planners are confronted with an impossible task. First, the need and current demand for their services is much greater than the supply. Second, in order to function effectively, they must be forceful, patient, adroit, and understanding. Their fundamental job is not to plan the city of their dreams, nor even to stamp their personality upon the existing city, but to help make it possible for the citizens to have the kind of environment that will enable them to function efficiently and happily physically, economically, and socially. This role demands a large measure of omniscience—an attribute not common to human beings.

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[2] F. Stuart Chapin, Jr., *Urban Land Use Planning*, New York: Harper & Brothers, 1957, p. xiii.

[3] Reproduced in *The Art in America*, Introduction to *American Painting*, Portfolio prepared by Irma Simonton Black, published by Bank Street College of Education.

[4] New York: Harcourt, Brace & World, Inc., 1961.

[5] Chapin, *op. cit.*, p. xiv.

[6] Ezra Ehrenkrantz and Ogden Tanner, "The Remarkable Dr. Doxiadis," *Architectural Forum*, May, 1961, p. 113.

[7] *Ibid.*, p. 154B.

Determination of the Land Use Pattern

Occasionally a capital city (Washington, Canberra, or Brasilia, for example) is located in a hitherto undeveloped area, and it is possible for planners to start with a clean slate in designing the city. This may also happen in rare instances in the development of other cities—the British New Towns, Oak Ridge, the Levittowns, and others.

By and large, however, the land use pattern in the cities has already been rigidly fixed and can be modified only in certain respects. The starting point, therefore, has to be a delineation of the present pattern, with subsequent consideration of adjustments that are desirable and feasible.

The distribution of urban land in central cities has the following ranges, according to available data:[8]

Residential	27-51%
Transportation (including streets, parking terminals, railroads, etc.)	25-50% or more[9]
Public use	9-28%
Industry	5-10%
Commerce	3- 7%

The above data merely give some idea of the present distribution of urban land uses. They do not indicate optimum, or even relatively desirable, land use patterns. To begin with, considerably more statistical fact-gathering concerning present uses is needed. Moreover, the data must be refined by categories of cities according to size and type.[10] Such data need to be supplemented by a great deal of high-level consideration of land needs for each of the major functions, with continuous recognition of the fact that the desirable land use pattern is not the same for a large and a small city, or for a central city and a satellite.

The tremendous and apparently insatiable demand for land for transportation constitutes one of the most crucial land use problems confronting the American city. The vertical solution utilized so extensively in supplying residential, office, and commercial space, can be applied only within narrow limits with respect to transportation. When transportation utilizes 40 per cent, or even more, of the land in a large city, how much more land is it possible to turn over to it and still leave enough for other purposes for a well balanced community life and a viable city.

This writer has seen no evidence that anyone is seriously attempting to come to grips with the following questions:

1. How much of their land are cities currently devoting to transportation of people, goods, and services in its varied forms, including streets and highways, parking areas (public and private), railroads, urban transit lines, airports, terminals of various kinds, pipelines, wires, etc.?

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[8] *See* "Land Use and Local Finance: Part I. Land Uses and Values," *Tax Policy*, XXVII (November-December, 1960), pp. 12-17.

[9] In the larger cities, there appears to be a tendency for transportation to utilize more land than residences. *See* Part I, pp. 15-16. Data on the amount of urban land devoted to transportation are incomplete and unsatisfactory.

[10] *Ibid.*, p. 18.

2. How does this ratio vary with size of city and type of city?
3. Is this percentage showing a tendency to increase?
4. On the basis of such data and with due regard to the various objectives (economic, social, and other) of current urban life, what proportion of a city's land area can be appropriately devoted to transportation by all the various means of transportation now being utilized? The answer would undoubtedly vary according to the size and type of the city.

When 40 per cent or more of a city's land is perhaps already being devoted to transportation and when there is some reason to believe that the percentage has a tendency to increase, these questions become of critical importance.

Recreation poses another major problem. As population densities increase, more breathing spaces in the steel and concrete city fabric are needed.

Although vital to the city, the outright spatial needs of commerce and industry are relatively light, if viewed on the basis of past patterns. Since both, however, are tending to a horizontal layout with abundant parking facilities, they obviously cannot realize these objectives in the central city but must seek them in outlying fringe areas. Provision of adequate industrial land reserves either within, or conveniently near to, a city, appears to be of strategic importance to the economic well-being of a community.[11]

With respect to office buildings the land problem does not appear to be so much in finding the relatively small amounts of land required, as in designing the surrounding land use pattern to accommodate the hordes of skyscraper office workers that crowd the streets, transportation facilities, and eating places.

Difficult land use problems arise in connection with other facilities that are important from the standpoint of social amenities.

Some of the regulatory aspects of urban planning are zoning and density control.

Zoning

Zoning is, or should be, a by-product and tool of planning and should follow, not precede, it in time, since the enforcement of zoning regulations in the absence of a carefully devised plan of development will at best merely maintain the status quo, and at worst hamper desirable development and permit undesirable land use patterns. It is recognized, however, that the city planning movement, as we know it currently, is only now in the process of arriving and has been preceded by a few decades of zoning experimentation, largely on the basis of prohibiting uses that do not conform to existing patterns of land use.

Zoning consists of dividing urban land into zones of supposedly compatible land uses. Its use was upheld by the United States Supreme Court in 1926.[12] The main categories of land use for zoning purposes are residential, industrial, and commercial. These are broken down into sub-categories.

The rationale of zoning in the past has been to preserve land for its highest and best uses, with single-family detached homes rated as the highest and best. The classic but ambiguous principle of "highest and best use" obviously

[11] *See* Sigafoos quotation on p. 8.
[12] Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 Sup. Ct. 114, 71L. Ed. 313 (1926).

does not mean the highest and best use from the standpoint of market values, since land used for other purposes is frequently much more valuable than land used for single-family homes.

Another conspicuous bit of illogic in past zoning is the permitting of residential encroachment in areas zoned for other purposes. Whereas commerce and industry have been rigorously excluded from high grade residential areas, no comparable efforts have been made to keep housing and other nonconforming uses out of industrial areas.

Exclusive Zoning for Industry

Recently the importance of protecting industrial areas and agricultural lands from residential encroachment has been recognized. During the postwar years, central cities have been seriously concerned over the loss of industry to outlying areas. The older areas have allowed little room for plant expansion and even less for employee parking space. Even areas that have been zoned for industry have not been reserved exclusively for it.

The Detroit City Plan Commission found in a survey of that city that less than half (44 per cent) of the land in the 27 industrial corridors was used for industrial purposes. Housing occupied 17 per cent of the land, and streets and railway rights of way 25 per cent. The Commission believed that with intelligent redesigning the proportion of land used for streets could be cut almost in half.

> In general, housing is not a compatible land use within the industrial corridors. Admittedly, it would be difficult to remove any substantial amount of housing not in a condition to warrant redevelopment. As a measure of the ultimate possibility, however, it was calculated that complete transformation of all land within the industrial corridors to industrial use would yield a total of 4,690 acres of additional land for such use.[13]

In recent years some zoning ordinances have provided for industrial zones excluding the so-called higher uses. In four out of five court decisions testing these provisions, "the ordinances were found to lack reasonableness as applied in the situation tested."[14] It has been pointed out that failure of industrial zoning may lead to public ownership of land.

> If zoning fails in effectively preserving land for industrial uses, the community may accomplish the same end by acquisition of land and its allocation to industry. Government as a landlord has greater control of land than it has under the zoning power. In a number of American projects industrial areas have been created and developed by a corporate owner. Such projects may be part of urban redevelopment schemes in recovering decayed areas. They may be sponsored by foundations, by local units of government, by commissions and authorities, or they may have multiple sponsorship. Similar experiments in the development of planned areas by municipal ownership or its equivalent have also been successfully tried in England. Despite the efficacy of such projects, however, they are of necessity more ambitious, more cumbersome, and less feasible for the community than is control of land development by zoning legislation. Direct sponsorship of industrial development by government can

[13] *Urban Land,* XVI (July-August, 1957), 5.

[14] Donald R. Bentz, "Industrial Zoning to Exclude Higher Uses," *New York University Law Review,* XXXII (November, 1957), 1263.

be ancillary to zoning control with good effect, but it is not a satisfactory substitute for zoning.[15]

A particularly outspoken stand on the problem of zoning for industry is found in a recent study by Robert A. Sigafoos, who declares:

> Land for industry is a major community and industrial development problem. It may very well be the key development resource for a great many Pennsylvania local and regional economies which are anxious to sustain, increase, or resuscitate rates of employment, family income, and business enterprise profits. The unavailability of industrial sites could be partially responsible for the creation of an industrially underprivileged economy where job opportunities, both present and future, payrolls, and commercial and industrial wealth potentials are restrained or even seriously narrowed and impaired.[16]

Mr. Sigafoos claims that there are "relatively few studies of value available in Pennsylvania which represent professional attempts to derive what might be considered reasonable estimates of future industrial land needs in specific urban areas."[17] He points out that:

> One of the obstacles is that very few professional city planning consultants and planning technicians seem to be at ease in the preparation of the economic and industrial development chapter or section of the typical community comprehensive or master plan. One needs only to review a dozen or so of the "Plans" which were prepared within the past five years in Pennsylvania to conclude that there has been a noticeable "sliding across" and a genuine neglect in some instances in the consideration of this vital element in the economic life of most communities. Many planners have satisfied their conscience in this phase of planning by falling back on industrial land-use ratios which have been reported by several well-known national professional planning sources. The original authors of these overworked and now oft-repeated ratios—which are almost deified as truisms—probably never intended that these averages should be used as "rules-of-thumb" for establishing or assessing the industrial land-ratios for each and every community throughout the United States. Nevertheless this is exactly what has happened in numerous Pennsylvania municipal planning studies.
>
> . . . . . .
>
> These Bartholomew averages, plus some other ratios which were reported by such organizations as the Urban Land Institute in Washington, D. C., have frequently been used in Pennsylvania city planning studies. The percentage figures which are reported for the local Pennsylvania communities are placed back-to-back with these standard percentages and ratios for comparison purposes and there is no real attempt to explain the limitations or shortcomings of such comparisons.
>
> Some of these specific limitations might be the structural differences which exist among local economies and which are dependent upon the type of industries which compose the employment base, and, in addition, the types of industry which might be reasonably expected to locate there in the future, the regional and national competitive position of local industries, the intensity of land-use among different industries because of the nature of their operations, the urban fringe/central city industrialization pattern, the division of industrial land-use between manufacturing and non-manufacturing industrial interests, and other relevant factors.[18]

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[15] *Ibid.*, p. 1276.

[16] Robert A. Sigafoos, *Land for Industry . . . the Pennsylvania Case: The Problem—The Action Required of Municipalities*, University Park: The Pennsylvania State University, Institute of Local Government, 1959, foreword.

[17] *Ibid.*, p. 31.

[18] *Ibid.*, pp. 31-33.

A distinctive feature of some of the most recent industrial zoning efforts has been to grade industry on the basis of performance with respect to such things as air pollution, noise levels, glare and heat limits, vibrations, fire hazards, electro-magnetic interference, and waste disposal.

Agricultural Zoning

Faced with the destruction of some of the best farming areas by urban sprawl, California has experimented with agricultural zoning. In September, 1953, the County of Santa Clara added to its zoning ordinance a prohibition against nonagricultural uses in an "Agriculture District" or "A" zone. In 1955, the California Legislature passed on a two-year interim basis the so-called "Greenbelt Law" which provided that no land exclusively zoned for agriculture could be annexed by a city without the consent of the owners. In 1957, an Assembly Subcommittee on Planning & Zoning reported that:

1. The subcommittee investigation indicates that experience in Santa Clara County under the state "greenbelt" legislation (Section 35009, Government Code) has been favorable and that the legislation (with minor amendments) should be re-enacted on a permanent basis. The growth of cities has not been adversely affected, and a check has been placed on indiscriminate annexation of agricultural lands.

The operation of the Santa Clara County exclusive agricultural zoning ordinance has also been generally favorable. The ordinance plus the State Greenbelt Law have, for the time being, protected nearly 20,000 acres of prime agricultural land from premature, unplanned, and economically wasteful subdivision.

2. It appears evident to subcommittee members that exclusive reliance cannot be placed on these measures to preserve our prime agricultural lands in expanding metropolitan areas. The best efforts of local government are bound to be thwarted by population and other urban pressures which spill over county boundaries, and which demand planning guidance on a regional or state-wide scale. There has also been insufficient attention to the problem of how the farmer, once set up in his greenbelt, can make a living while his land is subject to being assessed and taxed at valuations placed on urban uses.

3. As a result of its investigation, the subcommittee believes that the impact of urbanization on prime agricultural producing areas is sufficiently serious to warrant the formulation of a state policy and a program of legislative action to conserve agricultural lands. . . .

4. Enough is known about the impact of urbanization on agriculture to indicate the urgent need for a thorough investigation of California's situation, as a basis for legislative action. In the course of such an investigation, it will be desirable to determine approximately what our agricultural land requirements are going to be over the long run, so that we may start planning now for conservation of the necessary amounts and types of land. . . .

5. Effective land use controls will have to be provided to protect the farm land which will be needed. Also, land use controls must be supplemented by tax and other measures which will make it economically feasible for farmers to continue in business. Where this is not possible, greenbelt areas can be secured for future generations only by public purchase.

a. It is evident that the full protection the greenbelt laws were intended to give to agriculture is being watered down by a taxing policy inconsistent with their objectives. Under present policy of local government, agricultural lands even when zoned exclusively for agricultural use may be assessed and taxed at valuation placed on land for urban uses. . . .

b. Present tax policy puts constant pressure on the farmer to sell out to the subdivider, even when he might prefer to go on farming. . . . [19]

In addition to preserving land for high grade agricultural uses, "exclusive agricultural zoning may be enacted partly to achieve certain local urban benefits. Thus, agriculture may be permanently or temporarily retained in order to consolidate subdivisions, preserve industrial sites, maintain green belts for amenity values, prevent crowding and reduce rates of growth."[20]

Density Control

Until recently little thought has been given to economical and efficient use of land. There appears at present a new awareness of the scarcity of land within the city and its environs and an attempt to utilize the land more efficiently and economically. In this attempt more and more attention is being given to breathing spaces, whether such spaces are merely plazas around a downtown office building or park areas in a new development.

In addition to regulating the type of land use through zoning, considerable attention has been given to controlling the density of land use in order to break away from the pattern of dark canyons hedged in by monolithic structures in the cities and to prevent the downgrading of exclusive residential fringe areas through the development of crowded subdivisions.

Density Control in the Central City

That some of the earlier zoning restrictions did little to restrict overall density is evidenced by the following statement written in 1937:

. . . . it would seem that in several cities, including New York, it is legally possible for a developer to erect on a one-acre plot a residential building having a bulk of more than 4,000,000 cubic feet. In other words, 100,000 persons can be housed upon 60 acres—less than one tenth of a square mile.

If New York City were to be built up in the full density permitted under the zoning ordinance, with no new buildings over 600 feet in height, the capacity of the residential districts would be approximately 77,000,000, while the commercial districts would provide for a working population of 344,000,000.[21]

The older zoning restrictions concentrated on sorting out land uses by categories and limiting density in the big cities by height restrictions. At first, there was merely a maximum height limitation. The second innovation was the requirement that buildings be set back in tiers as they rose in height. This principle, first established in New York in 1916, has been dubbed the "wedding cake" or "ziggurat" plan. The setback principle induced land crowding on the lower levels. It also produced a monotonous similarity of structures.

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[19] California, Assembly Interim Committee on Conservation, Planning, and Public Works, *State Greenbelt Legislation and the Problem of Urban Encroachment on California Agriculture: Preliminary Report*, Sacramento, 1957, pp. 10-11.

[20] Jack Lessinger, "Exclusive Agricultural Zoning: An Appraisal," *Land Economics*, May, 1958, pp. 149-50. Reprinted as Reprint Number 16, Berkeley: University of California, Bureau of Business and Economic Research, Real Estate Research Program, 1958.

[21] W. Phillip Shatts, "The Relation of Zoning to Land Values," in *Urban Blight and Slums*, by Mabel Walker, *et al.*, Cambridge: Harvard University Press, 1938, p. 166.

During the fifties Chicago and Philadelphia experimented with a new type of setback principle combining a floor area ratio with a set of premiums for leaving open space at the ground level. New York followed suit in its new zoning resolution adopted in 1960. The floor-area ratio specifies how much gross floor area may be built on any lot in a given district. The new sky-exposure-plane controls the height of a building. To encourage an open-space-ratio a building that is set back from the property line is allowed to go higher than one that is built on the line. An additional three square feet of gross floor area is permitted for every square foot of plaza space at street level.

Such provisions not only permit much greater architectural diversity and open up congested areas, but also offer the downtown workers an opportunity for a few minutes relaxation in the open air during their noonday break. Congestion in the financial district of Manhattan is so great that one of the large office buildings has to wash its steps every day during the lunch hour period in order to keep them clear of the hordes of office workers from the surrounding area who would otherwise block the entrance by using the steps as a convenient perch. The new Chase-Manhattan plaza will undoubtedly supply a welcome bit of breathing space in this congested area.

A serious challenge to the planning profession is posed in analysis of the congestion-creating difficulties of different types of land use and in devising appropriate methods of planning land uses in such a way that this congestion can be reduced to tolerable levels.

A large city is subject to various types of crowding. There is first of all the crowding of the land with stationary structures. The effect of this crowding is intensified by multi-level structures, both above and below ground. The second major type of congestion is occasioned by the intermittent flows of pedestrian traffic. The movement and parking of automobiles and other vehicles contributes to both stationary and intermittent congestion.

Consideration of actual land coverage is only one aspect—and not necessarily the most important—of density control. Some types of structures make far heavier demands upon streets and other surrounding areas than other buildings. Office buildings, stores, convention halls, amusement centers, educational institutions, churches, and other places of assembly create more congestion than apartment buildings of comparable size. The pattern and timing of congestion varies with each of these structures, however. The office building creates three daily peaks for five days a week. The peaks are less pronounced and the general flow more sustained in the case of stores. The sharply varying intermittent traffic flow patterns for convention halls and recreation centers follow another pattern. The apartment house flows are less sharply peaked and at somewhat different hours. Some of the other structures create sharp peaks, but they come on evenings or weekends.

> . . . . the new Grand Central building, which is being projected, will spill some 37,000 people into the streets and subways of that area at the close of each working day—an area that reached the saturation point years ago. . . .
>
> . . . . a second roadway is now being added to the George Washington Bridge, which will double the number of cars entering the City of New York at that point. But where are these additional cars to be parked? This condition will cause further

chaos and eventual strangulation unless some logical solution is devised to relieve this traffic congestion through this new resolution.[22]

There is a ferment of new ideas concerning the regulation of land use through zoning and other subdivision controls. Some of the more significant ones relate to the concept and planning of the street. In the thinking of modern planners it is no longer a case of the street being a street—period. It may be an arterial highway,[23] a feeder street, a pedestrian mall, or another of many variants of a straight or curved passageway for pedestrians or vehicles. In breaking away from the rigid gridiron pattern of the past and designing the type of street suited to the particular function it is to serve, radical new possibilities are offered of utilizing urban land more economically and at the same time offering greater amenities to the local residents.

A challenge of major proportions is posed by transportation and the use of private motor cars in the city. The editors of *Architectural Forum* point out that:

> Four main kinds of traffic must be manipulated: passenger automobiles, pedestrians, services and good vehicles, mass transit. . . . To defeat congestion, these must be recognized as the separate elements they actually are—not as amorphous "traffic"—and must have accommodations suitable to their different natures.[24]

Ring roads, or belt highways to encircle downtown, periphery parking, underground arteries for service vehicles, underground mass-transit terminals, and pedestrian malls represent some of the attempts to sort the different types of urban traffic.

Density Control in Subdivisions

Expedients for density control are not confined to the cities. Moreover, there appears to be considerably more popular interest in such devices in suburban areas than in central cities. Discussion of ziggurat versus more complicated setback techniques is confined mainly to the professionals, but every layman appears to have vigorous ideas concerning lot sizes and zoning categories in fringe areas. Moreover, the objectives are more patently and directly tied in with tax considerations.

Acreage Zoning. The most widely publicized aspect of suburban density control has been the so-called snob zoning, whereby minimum lot sizes of one to five acres (some communities have even stipulated 10-acre minimums) are required. By such zoning communities hope to maintain a high-grade residential status, to preserve an appearance of open spaces, and to keep tax rates down by preventing an influx of small homeowners, presumably accompanied by heavy demands for municipal services, particularly schools. Such restrictions have been upheld by the courts in several states. Moreover, in June, 1960, the United States Supreme Court affirmed the right of New Canaan, Connecticut, to impose four-acre zoning restrictions.

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[22] Francis Keally, statement quoted in Committee for Modern Zoning, *A City Speaks*, Englewood Cliffs [N. J.]: Prentice-Hall, Inc., 1960, p. 1.

[23] This is a road, of course, but to the layman all urban traffic arteries fall into the general categories of streets.

[24] *Architectural Forum*, September, 1956, p. 115.

Such restrictions have been vigorously opposed by developers and by property owners wishing to sell to developers. There have also been criticisms by more detached commentators. To begin with, the effect of such restrictions in keeping down governmental costs has been subject to question.[25] It is claimed, for example, that in School District 2 of Westchester County, New York, the predominant zoning law requiring two to four acres per house has boomeranged by bringing into the district more high school than elementary school children. This has been caused by the fact that the high land costs prevent the younger families from moving into the district with the result that it is settled by more mature families with high school age children. The situation was described in a report made for the district by Herbert A. Landry, Director of Research for The New York City Board of Education.[26]

Other criticisms of the acreage zoning plan are that such restrictions promote an undesirable pattern of social and economic segregation. A further criticism relates to the uneconomic use of the land.

> At one time this trend to the larger lot would have received unqualified approval, but recently doubt has been expressed concerning its soundness. In the first place, with the availability of land rapidly decreasing, there is anxiety whether the community can afford such a low rate of use intensity. Furthermore, direct burdens to the municipality result: extra construction cost for sewers, water, other utilities and streets connecting the widely spaced houses; additional police and fire personnel; and more costly garbage and trash collection. This tendency toward municipal sprawl also aggravates the problems of the school district. Although the cost of the large lot was intended to discourage families with school age children from purchasing in the area, such has not been the case, and the desired elimination of school taxes has not occurred.[27]

Cluster versus Lot Size. Control of density is not the only objective of land use. In the face of a rising scarcity of available land for urban expansion, economy of land use is an equally valid objective. The two are not necessarily antithetical. Extravagant land use and clutter may, and sometimes do, accompany each other, as evidenced by the dreary ring of scatteration blight surrounding our cities.

The cluster method of residential development has been advocated both as a more economical and a more effective means of controlling density.

> The cluster plan is a pattern of development wherein house sites are grouped somewhat close together around access courts, with the remainder of the tract left in its natural state.
>
> . . . . . .
>
> The cluster method simply and in effect endeavors to gain increased density for single-family dwellings attractively arranged in cluster forms with accompanying safety from auto traffic, with privacy and many of the amenities not found in the traditional and sterile design characterizing all too many of today's tract developments.
>
> To obtain the higher density in the residential portions of the cluster design, ad-

[25] Massachusetts Department of Commerce, and Massachusetts Institute of Technology, Urban and Regional Studies Section, *The Effects of Large Lot Size on Residential Development,* Technical Bulletin No. 32, Washington: Urban Land Institute, 1958.

[26] *The New York Times,* January 20, 1960.

[27] Frank E. Horack, Jr., "Land Controls in an Urban Society," *Rocky Mountain Law Review,* XXVIII (June, 1956), 513-14.

mittedly a concession by the planning agency striving to keep it low, the design directs the "savings" in land to open park areas.[28]

Questions have been raised concerning the method of maintaining the open spaces for the exclusive use of property owners in the cluster community and the willingness of property owners to assume responsibility for them. The Omaha Insuring Office of the Federal Housing Administration stated in rejecting an Omaha development scheme:

> 1. The burden of maintaining the unused, or as the sponsor states, park areas would fall on the governmental jurisdiction, whether a district or village, and in my opinion would be excessive, or possibly beyond the ability of the village to meet.
>
> 2. Individual property owners would not be inclined to maintain areas they do not own, especially over a long period, and at the time when age would make it impossible for them to do so. You cannot change the habits and characteristics of people in a short time.
>
> 3. This lack of responsibility and incentive would result in these areas becoming a "no man's land," creating a fire and health hazard which would affect the future marketability seriously.
>
> 4. There is no evidence that the sponsors intend to or have the ability, financially or otherwise, to prepare these areas for maintenance. Apparently no study has been made as to how this could be legally done or what the cost to the citizens of the proposed village would be.[29]

In this connection it might be worth while to explore the legal aspects of the Gramercy Park arrangement in New York. When the developer laid out this area in the early nineteenth century, he set aside six of the 66 building lots as a private park. As each of the remaining lots was sold the deed carried a provision requiring the owner to contribute to the maintenance of the park. The result has been that the little square has been maintained for more than 125 years as a charming oasis in an otherwise not very attractive part of the city. What is also of interest is that the park, which the abutting properties maintain, has also maintained them as a high grade residential area during the entire period, even though it has at times been largely surrounded by warehouses, lofts, and slums.

Town Houses. Town houses, or row houses, offer an opportunity for economic utilization of land with equal or greater livability than detached houses with small corridor-like side yards.

> Ingenuity, imagination, and design quality on the part of the builder, his architect, and site planner, both inside and outside, go far to give the town house the status it requires. Rear garden-oriented units, integral garage entrances, and service features on the street side, living areas and terraces opening on a fenced wall or garden or common open space on the rear, sound-proof party walls, and carefully prepared protective covenants covering exterior architecture, use of house, yard, and garden spaces and common areas are necessary elements of a successful town house group.[30]

Police Power

It is likely that police power comes most readily to mind in connection with

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[28] Urban Land Institute, and National Association of Home Builders, *New Approaches to Residential Land Development,* Technical Bulletin No. 40, Washington: Urban Land Institute, 1961, p. 23.

[29] *Ibid.,* p. 32.

[30] *Ibid.,* p. 37.

the control of land uses. It has long been recognized that the private use of urban land cannot be determined solely by the owner, and that he should be restrained through the police power from using his land so as to constitute a hazard or nuisance to his neighbors. The enforcement of zoning, building, and occupancy provisions finds its basis in the police power.

The police power has been described as "the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government"[31] and also as "one of the most vague and ill defined."[32]

It has been pointed out that the property owner has a real interest in honest and effective enforcement of reasonable regulations.

> Without regulation of the physical character of property, urban realty investment would be very hazardous. Building codes greatly moderate the risk of fire and maintain a minimum standard of construction. They eliminate a great deal of unscrupulous competition that would otherwise detract from the value of sound structures. On the other hand, many elements in present day codes no doubt raise the cost of construction and consequently limit the volume of activity.
>
> . . . . . .
>
> . . . . Certainly, without some measure of control the hazard of investment would undoubtedly be intolerable.[33]

Not only are regulations concerning new buildings set forth in considerable detail in building codes, but in large cities specifications concerning the use of old tenements are prescribed under occupancy codes. Fire retardation of halls and stairways, provision of separate toilets for every family, and elimination of yard toilets were some of the New York City requirements in the twenties and thirties. In recent years New York papers have carried many stories about owners of slum properties being convicted for unsafe stairways, unsanitary conditions, infestation of rats, and fire hazards.

The Multiple Dwelling Law (Section 304) gives New York City the right to make repairs when the owner is unable or unwilling to do so. Until the costs can be recovered from the owner the city can use fees collected from housing law violators for such repairs.

Compulsory Demolition

The most effective method of getting rid of bad housing is to demolish it. Many cities have ordinances of long standing authorizing one or more city departments (usually Building, Fire, and Health) to notify an owner when a building is in an unsafe condition. If the owner sees fit neither to remedy the condition nor to demolish the building, the city may order demolition at the expense of the owner.

The writer undertook a questionnaire survey of demolition practices in 108 cities in 1936.[34] Current information on this subject is scattered and fragmentary. A survey and evaluation of existing powers and practices would

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[31] District of Columbia v. Brooke, 214 U.S. 138, 149 (1909).

[32] Arval Morris, "Toward Effective Municipal Zoning," *Washington Law Review*, XXXV (Winter, 1960), 541.

[33] Miles L. Colean, *The Impact of Government on Real Estate Finance in the United States*, New York: National Bureau of Economic Research, 1950, pp. 23 and 34.

[34] *See* chapters on "Condemnation and Demolition" and "Regulatory Demolition" in *Urban Blight and Slums, op. cit.*

offer helpful information on the practical extent to which compulsory demolition might be carried out.

The last two decades have been conspicuous, however, for wholesale demolition and clearance of large scale tracts for highways, public buildings, public housing, and other renewal projects. Such general clearance policies do not, however, eliminate the need for a continuing demolition policy with respect to specific buildings.

> There are many reasons why such structures should be razed. Abandoned buildings are a menace to the community in several respects. They provide an unsafe place for children to play. They may become a hangout for tramps or criminals. They provide a major fire hazard. Collapse of these buildings may injure passers-by or adjacent property. These structures make the property more difficult to improve as the prospective buyer is faced not only with the cost of tearing down the old building, but also with paying the price which the owner almost invariably demands for the structure. This attitude on the part of the owner is fostered by the fact that as long as a structure is left standing, however dilapidated, it is likely to be assessed for some taxes.
>
> Demolition of old buildings, particularly in congested districts, makes more sunlight and air available to other tenants in the district. Further, the spectacle of many vacant lots in a city may have a deflationary effect on land prices, as it will bring home to property owners the extent of the supply of available land. . . .[35]

Rent Control

Rent control is another example of using the police power. To a certain extent, it tends to have an opposite effect from the sanitary and safety standards discussed. Although rent control may be necessary under extraordinary conditions, such as war, and for limited periods, it has been pointed out that if maintained too long it may result in deterioration of building standards and a reduction in the supply of rental housing.[36]

Public Ownership

Government exercises control in its most extreme form when it takes possession of the property. Public ownership may be complete when the government possesses all the rights in the land, or it may be partial when the government acquires only certain rights, such as access, development rights, or others. (Partial ownership is not to be confused with partial taking, when the government acquires only a spatial portion of an owner's property.)

Government ownership may be permanent, as in the case of land acquired for public works, or it may be temporary possession for various purposes.

Sometimes government acquires land because the land is needed for a direct and immediate public purpose, such as highways, flood control, or national defense. Sometimes land is acquired and held in reserve for future use. In other cases the land as such is not needed directly by the government, but the assembly of land for socially and economically desirable purposes can be achieved only through the public power. This is particularly true in the case of large scale redevelopment of slums and blighted areas.

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[35] *Ibid.*, p. 132.

[36] Ernest M. Fisher and Robert M. Fisher, *Urban Real Estate*, New York: Henry Holt and Company, 1954, pp. 446-51.

In still other cases, the government does not desire to purchase the land outright on either a permanent or temporary basis, but it desires to forestall undesirable future use of the land and it may attempt to do this through the purchase of development rights.

Types of Public Land

A large part of the land now in government ownership is part of the public domain. Other holdings have been acquired through purchase, condemnation through the power of eminent domain, bequest, by tax default, or as a result of some type of reclamation or made land.

Over a fourth of all the land in the continental United States is in public ownership.[37] Federal land constitutes 21.4 per cent (408 million acres); state land 4.2 per cent (80 million acres); and county and municipal land 0.9 per cent (17 million acres). Over 70 per cent of the public land and almost 19 per cent of the total land area is in the public domain.

The public domain was acquired by cessions to the federal government from the 13 original states and from purchases and cessions from foreign governments. At one time three-fourths of continental United States and nearly all of Alaska was in the public domain. The public domain now amounts to about 358.5 million acres. Land acquired by the federal government in other ways amounts to 50 million acres.[38]

Public ownership of land increased by 11 million acres from 1930 to 1954. This increase "represented land acquired for forests and other public purposes such as national defense and public reservoirs. Part of the increase also resulted from tax reversions in the 1930's."[39]

Over 83 per cent of the public land is used for pasture, grazing, and forests. Five per cent is in parks and wildlife areas. National defense areas account for approximately 4 per cent. All other public land uses comprise about 8 per cent of the public acreage.

Land for the Cities

A relatively small segment of the publicly owned land is of particular significance for the cities. It is in this small segment, however, that we meet most of our critical land supply problems. A number of acute urban problems arise from difficulties involved in the use of this land.

The land needed for transportation (notably airports and other terminals, expressways, streets and highways, mass transit, and parking facilities), for recreation, for water supply and sewage disposal, for government institutions, and for urban renewal may be and frequently is land with considerable value for private uses. Landowners may not wish to dispose of their land at all, or

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[37] 1954 data. *See* table on page 7, Part I.

[38] Karl S. Landstrom, "How We Acquired Our Landed Estate," and John B. Bennett, H. R. Josephson, and Hugh H. Wooten, "The Heritage of Our Public Lands," *Land: The 1958 Yearbook of Agriculture,* Washington: Government Printing Office, 1958.

[39] Hugh H. Wooten and James R. Anderson, *Major Uses of Land in the United States,* Agriculture Information Bulletin No. 168, Washington: United State Department of Agriculture, Agricultural Research Service, 1957, p. 34.

if they do, they may demand exorbitant prices. Certain communities may object to neighboring land being used for some of the above purposes.

Elaborate studies have been made showing the increase of land values resulting from various public uses, such as expressways, airports, etc. Less attention is usually given to the destruction of intangible values, or to the fact that some property owners may suffer substantial losses, even though there is an average net gain.

A general weakness of these studies is that they take into consideration only actual values before and after the development; thereby implying that in the absence of that particular development, the area would have been forever stagnant. We all know that such is not the case. An outstanding defect of much of our current statistical research is that we measure only the actual. For example, in traffic surveys, origin and destination counts are made of present traffic, and all too often it is completely ignored that the data will be obsolete long before new highways can be planned, much less built.

More imagination and more adjustment for dynamic influences are needed. Perhaps we shall have to take some lessons from the physicists and aim ahead of a moving target if we desire to hit it. In evaluating results we can no more assume that an area would forever remain stagnant in the absence of a specific improvement than we can assume from an origin and destination study that the present traffic pattern will continue unchanged.

Even less attention may be given to the destruction of existing community values. How can one measure the social loss that results when scenic and recreational areas that should have been reserved for public parks are destroyed or mutilated by taking land for other public or for private purposes? How can one estimate the economic loss to a community when strategic land that should have been held in reserve for industrial use is broken up by residential developments that could as well have been placed elsewhere? Indeed, who can measure the social and economic losses to individuals when a large area may be cleared for some public purpose?

Eminent Domain

Acquisition of land through the power of eminent domain is the most frequent and the most bitterly resented method of public acquisition. It has been said that the power of eminent domain can "be referred to as one of the most harsh laws of the land, second only to capital punishment."[40] This may be something of an overstatement, as it would seem that the military draft, which arbitrarily demands a man's services and changes his pattern of life for a period of time, is harsher than the process of arbitrarily taking a man's property. It cannot be overlooked, however, that in some instances the process of eminent domain can change a person's pattern of living and possibly even take away his means of livelihood. The arbitrary taking of either services or property is a drastic procedure and on occasion can be highly injurious to the person affected. Although both are at times necessary for the public good

[40] Clifton E. Speir, "Eminent Domain Proceedings Legal Basis for Appraising," *Baylor Law Review*, X (Winter, 1958), 1-2.

and although in certain cases both may change an individual's life and circumstances for the better, the fact remains that eminent domain, like the military draft, is a harsh procedure which may inflict great damage.

If one may judge by the current spate of articles in legal journals, by news stories, and by recent congressional hearings,[41] resentment over public acquisition is increasing. Moreover, it is by no means only the property owner who is adversely affected. Tenants of residential buildings and small business operators have been among the most seriously affected.

> . . . . The scope and nature of contemporary takings have aggravated the injury which results from condemnation. Initially, the great number of takings inflicts losses on an ever-increasing multitude of people; such projects as large scale federal and state road building and mushrooming urban renewal leave few segments of the nation directly unaffected. These programs also involve taking of improved commercial and industrial property where incidental losses are necessarily more prevalent and serious. Furthermore, present takings, by tending to encompass large areas of contiguous property, make prompt relocation to mitigate losses considerably more difficult. And, as popular indignation due to the denial of these losses may seriously impede beneficial redevelopment programs, the workings of the market value formula take on an importance apart from the individual rights affected.[42]

Articles in legal journals emphasize and re-emphasize the need for re-examination of the principles and practices with respect to eminent domain.

> In view of the increased governmental acquisition of property through the process of eminent domain, there is a need to re-evaluate the extent to which existing norms are adequately resolving the conflicts which arise from such takings. The present legal consequences of public intervention in the landlord-tenant relationship demonstrate that norms which were once adequate do not now effectively promote values in a society engaged in such diverse programs as highway expansion and urban reconstruction.[43]

Some of the changes recommended are payments for "moving costs, loss of profits and good will, damages to business from an inability to locate an acceptable substitute location, attorneys and appraisal fees."[44] Prompt payment of compensation and prompt and speedy trials of condemnation proceedings are also recommended.[45]

Problems incident to land acquisition reach a peak in connection with urban redevelopment. Criticism of the government's acquisition policy has appeared on several counts.

> 1. It is claimed that considerable injustice has been done to small property holders. Extreme reliance on the market value concept ignores some very real other values which a property holder may give up when relinquishing his property.

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[41] *See*, for example, United States, Congress, Senate, Committee on Public Works, Subcommittee on Flood Control—Rivers and Harbors, *Land Acquisition Policies and Evaluation of Recreation Benefits*, Hearings, 86th Congress, 2d Session, Washington: Government Printing Office, 1960.

[42] *Yale Law Journal*, "Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses," LXVII (November, 1957), 63-64.

[43] Wallace J. Baker, Jr., "Condemnation: Concepts and Consequences of Public Intervention in the Landlord-Tenant Relationship," *Kansas Law Review*, IX (May, 1961), 400.

[44] Sidney V. Searles and Sidney O. Raphael, "Current Trends in the Law of Condemnation," *Fordham Law Review*, XXVII (Winter, 1958-59), 553.

[45] *Ibid.*

2. On the other hand, the government may pay inflated values, based on unreal assumptions concerning the real worth of the property. In this way the government serves to shore up fictitious land values.

3. In the case of urban redevelopment where small business enterprises in blighted areas are displaced and the land is converted to new business uses, only relatively prosperous business enterprises can utilize it under the new standards of development, but such enterprises are subsidized by the government which offers them the cleared and assembled land at less than cost. In this way weaker enterprises are forced to subsidize stronger ones.[46]

4. Moreover, there is widespread skepticism concerning the rationality of the awards made. When a property holder receives less than the assessed value of his property he feels understandably bitter; and when condemnation awards are made that are many times greater than the assessed valuation, taxpayers feel that their hard-earned tax dollars are being deliberately squandered, or perhaps even being dishonestly used.

Considerable furore was stirred up in New York City in 1958 when a condemnation award of $81,715 was made for a school site in Brooklyn which had been assessed at $14,500.[47] In another instance the city paid $1,496,546 for undeveloped Rockaway land that was assessed for less than $150,000.[48]

Assessed values cannot be made the basis for condemnation awards unless assessing standards are very high, but when the latter are many times greater than the former, something is obviously very wrong in either the assessing or the condemning process, or both.

Controversy over, and dissatisfaction with, federal policies of land acquisition in rural areas was brought out sharply in recent Senate hearings on land acquisition policies.[49] Much of the testimony concerning methods used by the Army Corps of Engineers in taking ranch properties in South Dakota for the Big Bend Dam was couched in terms of extreme bitterness.

Purchase of Development Rights

The purchase of development rights, or conservation easements, is a proposed tool for maintaining open space that has had considerable publicity during the past few years. The most thorough presentation of this device has been made by William H. Whyte, Jr.[50]

The proposal is to utilize the power of eminent domain for the purchase

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[46] "Urban renewal projects favor particular private enterprises at the expense of less modern and less highly developed businesses. Under these programs, business property and residences may be taken through eminent domain although their physical condition would not justify governmental condemnation of the property by exercise of police power. Because private developers can secure valuable sites at prices well below their true worth, they in effect are subsidized by governments at the expense of other private property owners. So viewed, the denial of incidental losses imposes on condemnees a greater burden of financing public improvements; condemned businesses are thus forced to contribute to the pecuniary success of other profit-making enterprises. True, such condemnations are primarily for public uses. But even assuming that nonpayment of incidental losses is a benefit of condemnation which should inure to the government, profit-making corporations should not necessarily receive such preferential treatment," *Yale Law Journal, op. cit.*, pp. 92-93.

[47] *The New York Times,* April 23 and August 7, 1958.

[48] *The New York Times,* June 19, 1958.

[49] *See* footnote 41.

[50] William H. Whyte, Jr., *Securing Open Space for Urban America: Conservation Easements,* Technical Bulletin 36, Washington: Urban Land Institute, 1959.

of the development rights in a piece of property, rather than to acquire the full property. Precedents are found in easements of various kinds.

The conservation easement might be used to prohibit the erection of buildings, to restrict the alteration of private roads, to prohibit the removal of trees or other greenery, to prohibit dumping, or to impose other restrictions on the use of the land. The purchase of these rights from the owner would be in perpetuity.

Miscellaneous Methods of Acquiring Land for Public Use

In addition to land remaining in the public domain and land acquired through eminent domain condemnation and purchase, there are various other ways that public land may be acquired. Land may be acquired through bequest, through tax foreclosures, or through the process of reclamation or made land. These devices have been particularly helpful in connection with recreational spaces.

There is developing a new awareness of the value of open space, whether such space is a plaza, a vista, a view of the waterfront, a park, playground, or totlot, in the central city, or large green areas in the surrounding communities. The potent effect of preserving land values through open spaces has been largely ignored. In addition to its social, psychological, and physical rewards, the well-kept open space adds substantially to the value of the surrounding real estate and this effect may persist over many generations and even centuries.

In connection with new subdivisions attempts have been made to require the subdivider to provide park and playground areas. California, New York, and Oregon have enacted enabling legislation permitting local governments to require a subdivider to set aside for recreation a portion of the land being developed, or at the option of the government to require a cash payment in lieu of the land donation. Compulsory cash payments have been thrown out by the courts in New York and Oregon.

The Oregon Supreme Court held that local officials "sought to produce revenue from subdividers to accomplish desirable ends indirectly" and that made the requirement an illegal tax rather than a fee for subdivision.

The Orange Supreme Court [New York] invalidated the state law on this subject. Judge Hugh S. Coyle said in rendering the decision: "The statute compels a landowner who proposes to subdivide to pay more than his proportionate share for parks, playgrounds, and recreational facilities."

New York builders are threatening to challenge also the power to demand dedication of land for recreational purposes. Some developers are, however, voluntarily setting aside land for recreation.

The Illinois Supreme Court has ruled that the Chicago suburb of Mt. Prospect cannot force a developer to donate 6.7 acres for school and park use, because the need for new schools would be occasioned by the "total development of the community" and therefore "the subdivider should not be obliged to pay the total cost of remedying."[51]

[51] Decision reported in *House & Home*, July, 1961.

The municipality has other means of obtaining land for parks, recreation, and open spaces. Gifts and bequests have constituted an important means.

City-owned land no longer needed for some other urban use may be transferred. Tax-foreclosed land may be utilized for recreational purposes or may be exchanged for other land to be used for that purpose. "The city of Yonkers in New York obtained all of its park and school sites for many years through judicious management of its tax delinquent lands by the municipal real estate bureau, which skillfully made exchanges of the city's holdings."[52]

An excellent summary of existing methods of acquiring open spaces has been made by Shirley Adelson Siegel.[53] It is the author's conclusion that "more authority exists to accomplish an open space objective than most public agencies are themselves aware."

Land-fill and other salvage operations offer another opportunity. Due to the foresight of Mayor Daniel W. Hoan in the twenties, Milwaukee obtained three additional miles of lakefront area as a result of getting the federal government to establish a breakwater in the lake which caused the shoreline to fill in. This is used by the city government for commercial harbor development, piers and related activities. The city also obtained an additional three-mile stretch of Lake Shore Drive as a result of a breakwater development.[54]

> . . . . Thousands of acres have been made available for park programs through the filling in of low lying areas, or even through the laying of topsoil over garbage dumps. Newark, New Jersey, thus made a park about 20 years ago out of a former garbage dump. New York City has augmented its holdings a tremendous amount by the use of sanitary land fill.
>
> The swampy New Jersey Meadows, now the subject of a concerted study by local and State agencies, are expected to yield considerable park and recreational area.[55]

The public purpose of parks and playgrounds and the right of acquiring land for them through eminent domain are now generally accepted. Some states have gone somewhat further in permitting municipalities to acquire land for "open spaces" outside the city limits. For example, in 1959 California granted cities and towns authority to acquire land, or an interest in land, to preserve open space. A 1917 New Jersey statute gives municipalities the right to acquire land either inside or outside its boundaries for "public parks, squares, open spaces, playgrounds, beaches. . . . "

In 1960 New York passed a bond issue of $75 million of which $30 million was allotted to state recreational and park uses, including the Forest Preserve, and $40 million was allocated to local governments for local purchase of park land.

A 1961 legislative proposal for a Green Acres program has been passed by the New Jersey legislature but must be approved by the electorate. The act provides for a $60 million appropriation for land acquisition for recreation

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[52] Shirley Adelson Siegel, *The Law of Open Space: Legal Aspects of Acquiring or Otherwise Preserving Open Space in the Tri-State New York Metropolitan Region*, New York: Regional Plan Association, Inc., 1960, p. 9.

[53] Siegel, *op. cit.*

[54] Information obtained through correspondence with Shepard A. Magidson, Executive Secretary, Office of the Mayor, Milwaukee.

[55] Siegel, *op. cit.*

and conservation to be financed by a state bond issue. One-third will be used in making grants to the municipalities on a matching basis.[56]

A provision in the 1961 Federal Housing Act provides $100 million in grants to state and local governments to preserve key open spaces. Local governments would have to provide up to $3 for every dollar of federal funds.

In addition to acquiring land for open spaces some municipalities have bought land to prevent premature subdivision or to secure adequate industrial land reserves, or for other needs foreseen in the future. The Borough of Mountain Lakes in Morris County, New Jersey, owns 35 per cent of its land. Landowners offer property to the borough before selling it to speculative interests.[57]

Henry Fagin, planning director of the Regional Plan Association of New York, reports that this procedure has been operating successfully for years in Stockholm and Copenhagen. The state and county authorities in Wisconsin pursue the same policy.

"Purchasing of vacant land by the community where it wants to discourage or control development over a period of years seems to be a fair way of going about it," commented Mr. Fagin.[58]

An unusual method of obtaining land for future urban use is found in Oklahoma City. Groups of businessmen working through the Chamber of Commerce buy up land needed for future public improvements and hold it until the city can raise the money to take it over.

. . . . In one of several strikingly direct solutions, the Chamber raised the money to purchase outright 4,300 acres adjoining Tinker Field. This breathing space protects flight patterns, allows room for base expansion, and for the Chamber's own largest industrial park to grow. Of this total, 638 acres were subsequently made a gift to the Air Force for needed housing, a base hospital, and recreational facilities.

In another move, agents of the Chamber quietly went about buying options on some 8,000 additional acres south of the base for further protection, but primarily as a site for a new terminal reservoir for the $65 million, 99-mile Atoka pipe-line project which will bring in precious water for the city from southeast Oklahoma. Control of the land, purchased at a fraction of what the city would have had to pay in open negotiations, also makes way for future municipal recreation grounds.

. . . . when the city can raise enough bond-issue money of its own, the land is turned over to public ownership at or close to cost. This unique method of financing public improvements has involved some $100 million over the past 40 years, and the volunteer businessmen underwriters have yet to lose (or make) a dime. The Chamber currently has $4.5 million borrowed for various local landholding projects, owns some 12,000 acres all over town, including eight industrial parks and 14 of the plants on them, which it manages and leases through yet another (profit-making) corporation, Oklahoma Industries.

The Chamber has also acquired, or urged city acquisition of, the land for most of the city's expressway system now building.[59]

Concurrently the city has been pushing its annexation program to include airfields, reservoirs, and future expansion land. Farm areas have been brought in under agricultural zoning.[60]

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[56] Salvatore A. Bontempo, "Green Acres Program Assists Municipalities," *New Jersey Municipalities*, XXXVIII (June, 1961), 5.

[57] David Anderson, "Westport Urged to Buy Lands," *The New York Times*, March 13, 1955. *See also Horizons for Modern Pennsylvania Local Government*, "Ways To Discourage Unwanted or Too Rapid Growth," III (April, 1956).

[58] *Ibid.*

[59] *Architectural Forum*, "Oklahoma's Second Land Rush," June, 1961, pp. 113-15.

[60] *Ibid.*

The Role of Government Regulation

The most important, the most current, and the most controversial aspects of land use regulation, other than taxation, have been indicated briefly in the foregoing pages. It is evident that there is needed a clarification of objectives and a re-examination of existing and proposed methods of control if an integrated and effective pattern of regulation is to be achieved.

Failure and inepitude in government regulation irresistibly lead to a demand for government enterprise. It is the responsibility of government to provide a framework of regulation—not in a multiplicity of exasperating details, but in broad outlines—in order that private enterprise whether on the part of an individual or a giant corporation, can operate effectively and with minimum interference with the rights of others.

When the government fails in its function of providing orderly, logical, and efficient regulation—whether this failure is due to such an excess of petty detail that private enterprise is stymied and ineffective, or to such lax enforcement of essential safeguards that it becomes arrogant and inconsiderate of the general welfare—the government is ultimately forced by the resulting shortcomings and abuses and the consequent public outcry to take over functions which could perhaps have been handled adequately and conceivably even better on a private basis.

A long record of failure with respect to land controls, to inadequate or unduly restrictive building codes, to enforcement of sanitary standards, to effectively dealing with social problems, and in many other ways has brought about such deplorable conditions that many persons feel that extensive public ownership of land and buildings through public housing is the only way out of the morass. A somewhat analogous situation is developing with respect to mass transportation and in some other areas.

It is the government, as the representative of the total community, that must establish the rules of the game in broad outline and that must see that such rules are observed. The very essence of success is that these rules be expressed in broad and clear principles rather than in minute details and that they be effectively enforced.

If society through its chosen representatives cannot hew to the thin line demarcating essential and excessive regulation, we shall be catapulted into an ever-increasing vortex of public enterprise and public ownership—for which our present standards of efficiency and ethics are by no means adequate, if we may judge by current revelations and controversies concerning performance and ethics in government. In many respects great progress has been made in the improvement of governmental standards and myriads of public employees are working efficiently and conscientiously, but we cannot close our eyes and ears to the unsavory stories that appear daily in the public press. A large percentage of these stories relate to regulation and control of land, including the buildings upon the land.

The replacement of private by public ownership and operation is evidence, to a considerable extent, of failure in the peculiarly governmental function of regulation.